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09/702,004	10/30/2000	Vladimir Victorovich Schipunov	291508006US1	782

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EXAMINER
LASTRA, DANIEL

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3622	

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _25 March 2002_ .

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-37_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-37_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)   4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   5) ☐ Notice of Informal Patent Application (PTO-152)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .   6) ☐ Other: .

DETAILED ACTION

1.   Claims 1-37 have been examined. Application 09/702,004 <u>(targeting</u>
<u>electronic advertising placement in accordance with an analysis</u>
<u>of user inclination and affinity)</u> has a filing date 10/30/2000 and Claims
Priority from Provisional Application 60/167,060 (11/22/1999).

Claim Rejections - 35 USC § 101

2.   Claims 22-24 and 34 are rejected under 35 U.S.C. 101 as non-functional
descriptive material. The data structure describe in claims 22-24 and 34 is simply data
file – no functional change occurs when an application program uses the structural data

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

Regarding claims 22-24 and 34, the phrase "such that the contents of the data
structure may be used" renders the claim(s) indefinite because the claim(s) refer to the
potential of the action and leaves in doubt whether the action is encompassed in claims
22-24 and 34.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta et al (U.S. 6,487,538).

As per claim 1, Gupta teaches:

A method in a computing system for assessing, for a selected electronic advertiser having a web site and each of a plurality of electronic publishers each also having a website, a measure of the desirability of placing with the electronic publisher one or more advertising messages for the selected electronic advertiser, comprising:

for each of a plurality of users, storing a user identifier on a computer system used by the user (see column 4, line 66 – column 5, line 10);

when one of the plurality of users visits the electronic advertiser website, receiving and storing an indication of a first type indicating that the user visited the electronic advertiser website, the indication containing the user identifier stored on the computer system used by the user (see column 4, line 26 – column 5, line 10);

when one of the plurality of users visits the website of one of the plurality of electronic publishers, receiving and storing an indication of a second type indicating that the user visited the electronic publisher website, the indication containing the user identifier stored on the computer system used by the user and an identifier of the electronic publisher (see column 4, lines 26-37;

selecting the user identifiers contained in stored indications of the first type (see column 4, line 26 – column 5, line 10);

determining the number of unique selected user identifiers (see column 4, lines 26-36);

for each of the electronic publishers, determining the number of selected user identifiers that are contained in at least one indication of the second type that also contains an identifier of the electronic publisher to obtain a count for the electronic publisher (see column 4, lines 26-36);

Gupta does not expressly teach:

dividing the count for the electronic publisher by the number of unique selected user identifiers to obtain an inclination metric for the electronic publisher;

analyzing the inclination metrics obtained for the electronic publishers; and

selecting one or more of the electronic publishers on which to place an advertising message for the advertiser based upon the analysis.

However, Gupta teaches that "advertising is increasingly utilized by owners of web sites (referred to as web hosts) as a revenue source and for the advertisers to gain publicity and web site access. Web hosts sell advertising space on their web site to distribute web pages including advertisements to Internet users. It is desirable for advertisers to target specific audiences and persons that may be interested in the specific good or service being advertised" (see column 6, lines 1-5). Also, Gupta teaches that "each and every user action is processed through the ISP or proxy of the ISP. Consequently, the ISP has the ability to maintain statistics on the user and the user's Internet viewing (referred to as user information or profile information). The ISP or proxy has the ability to maintain a user's profile consisting of demographic information, such as sites (URLs) the user has accessed and the amount of time spent on each and every web site (URL)...All URL request, text, and other information is

transmitted from client to proxy and proxy copies this information and stores in a raw database" (see column 9, lines 10-51). Gupta also mentions that "by evaluating demographic and profile information as described, direct marketing advertisers and one-on-one advertisers may more accurately target specific individuals. Further, the ISP and other proxies benefits (by selling advertising space and utilizing its collected profile and other information, web server benefits (by selling more advertising space regardless of whether web server is small or large), advertiser benefits by accurate targeting (resulting in increase probability of a click-through), and client benefits by receiving advertisements that the client may be particular interested in...Another advertising scheme accesses cookies stored on individual's browsers to determine the types of web sites that have been accessed. When a web site is accessed, a cookie is sent by the web site identifying itself to the web browser.   Also Gupta teaches that "payment schemes for online advertising vary. For example, an advertiser may pay based on the number of times different users access a web site (referred to as hits or page impressions). Alternatively, an advertiser may only pay if a user clicks on the advertiser's banner or icon and views the advertiser's web page (referred to as click-through). Further, a web host may also receive payment based on any completed transactions that results from a click-through (e.g., the web host receives a percentage of the payment received by the advertiser from the user) (referred to as a referral commissions)" (see column 4, lines 26-36). Furthermore, Gupta teaches that due to the increased overhead and low hit count for small web sites, advertisers are reluctant to advertise on the smaller web sites (see column 5, lines 48-53). Therefore, it would have

been obvious to a person of ordinary skill in the art at the time the application was made, to know that a particular advertiser would use the Gupta system to collect, track and store user's on-line behavior and would use this stored data to determine how successful the placement of a particular advertisement in a particular Internet Publisher would be, in comparison of placing the same advertisement in a different Internet Publisher. For example, if a particular advertiser places a particular advertisement in Publisher A and in Publisher B, and if 100 visitors visit Publisher A and 100 visitors visit Publisher B. Then suppose, that 75 visitors click-through to the particular advertiser's website in Publisher A but only 5 visitors click-through to the advertiser's website in Publisher B. Then, it would be obvious by using simple mathematics, such as dividing one number by another, that Publisher A would rank higher than Publisher B, in placing that particular advertisement for that particular advertiser. Therefore, it would be obvious that Gupta would track and store the online activities of the users and would use this store data to determine which publisher would do better than others in placing particular advertisements.

As per claim 2, Gupta teaches:

A method in a computing system for assessing, for a selected advertiser and each of a plurality of candidate advertising outlets, a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser, comprising, for each of the plurality of candidate advertising outlets:

identifying a plurality of users that have visited the candidate advertising outlet (see column 4, lines 26-36);

counting the number of identified users that have also visited the selected advertiser (see column 4, lines 26-36); and

Gupta does not expressly teach generating for the candidate advertising outlet a metric that compares the number of identified users to the number of counted users and constitutes a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser. However, as explained in claim 1, Gupta would track and store the online activities of the users and would use this store data to determine which publisher would do better than others in placing particular advertisements.

As per claim 3, Gupta teaches:

The method of claim 2, wherein the candidate advertising outlets are web publishers (see column 14, lines 48-64).

As per claim 4, Gupta teaches:

The method of claim 2 wherein the candidate advertising outlets are Internet publishers (see column 14, line 48-63).

As per claim 5, Gupta teaches:

The method of claim 2 wherein the candidate advertising outlets are electronic publishers (see column 14, lines 48-64).

As per claim 6, Gupta does not expressly teach:

The method of claim 2 wherein the metric is generated by dividing the number of counted users by the number of identified users. The same rejection applies to claim 1 applies to claim 6. Gupta would track and store the online activities of the users and

would use this store data to determine which publisher would do better than others in placing particular advertisements.

As per claim 7, Gupta does not expressly teach:

The method of claim 2 wherein the counting counts the number of identified users that (a) have also visited the selected advertiser and (b) have not viewed an advertising message for the selected advertiser,

and wherein the metric is generated by dividing the number of counted users by the number of identified users.

The same rejection applies to claim 1 applies to claim 7. Gupta would keep track of the amount of visitors that visit a particular advertiser and have not viewed an advertising message for the selected advertiser (see column 5, lines 1-9; column 4, lines 26-36; column 10, lines 9-24). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know Gupta would track and store the online activities of the users and would use this store data to determine which publisher would do better than others in placing particular advertisements. An Internet Publisher would indicate to a particular advertiser a measure of the desirability of placing a particular advertisements in their Internet Publisher web site in comparison to other Internet Publishers, by simply quoting the ratio of the total amount of visitors that click-through to a particular advertiser's website by the number of identify user that click-through to that particular advertiser's website but have not viewed an advertisement message from that particular advertiser. This ratio would be compared to the ratio of others Internet Publisher and would be used to

rank the Publishers in desirability of placing particular advertisements for particular advertisers.

As per claim 8, Gupta does not expressly teach:

The method of claim 2 wherein the counting counts the number of identified users that have also visited the selected advertiser without first viewing an advertising message for the selected advertiser,

and wherein the metric is generated by dividing the number of counted users by the number of identified users. However, the examiner applies the same rejection as claim 8.

As per claim 9, Gupta does not expressly teach:

The method of claim 2 wherein a related advertiser is related to the selected advertiser, and wherein the counting counts the number of identified users that (a) have also visited the selected advertiser, (b) have not viewed an advertising message for the selected advertiser, and (c) have not viewed an advertising message for the related advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users. However, as explained in claims 1 and 7, an Internet Publisher would indicate to a particular advertiser a measure of the desirability of placing a particular advertisements in their Internet Publisher web site in comparison to other Internet Publishers, by simply quoting the ratio of the total amount of visitors that click-through to a particular advertiser's website by the number of identify user that click-through to that particular advertiser's website but have not viewed an advertisement message from that particular advertiser. This ratio would be compared to

the ratio of others Internet Publisher and would be used to rank the Publisher in desirability of placing particular advertisements for particular advertisers.

As per claim 10, Gupta does not expressly teach:

The method of claim 2 wherein a related advertiser is related to the selected advertiser, and wherein the counting counts the number of identified users that have also visited the selected advertiser without first (a) viewing an advertising message for the selected advertiser or (b) viewing an advertising message for the related advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users. The Examiner answers with the same rejection applied to claim 9.

As per claim 11, Gupta does not expressly teach:

The method of claim 2 wherein the counting counts the number of identified users that (a) have also visited the selected advertiser and (b) have viewed an advertising message for the selected advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users. The Examiner answers with the same rejection applied to claim 9. An Internet Publisher would indicate to a particular advertiser a measure of the desirability of placing a particular advertisements in their Internet Publisher web site in comparison to other Internet Publishers, by simply quoting the ratio of the total amount of visitors that click-through to a particular advertiser's website by the number of identify user that click-through to that particular advertiser's website and have viewed an advertisement message from that particular advertiser. This ratio would be compared to the ratio of others Internet

Publisher and would be used to rank the Publisher in desirability of placing particular advertisements for particular advertisers.

As per claim 12, Gupta does not expressly teach:

The method of claim 2 wherein the counting increments the count for each identified user that (a) visited the selected advertiser and (b) has viewed an advertising message for the selected advertiser and decrements the count for each identified user that (c) visited the selected advertiser and (d) has not viewed an advertising message for the selected advertiser,

and wherein the metric is generated by dividing the count by the number of identified users. The Examiner answers with the same rejection applied to claims 9-11.

As per claim 13, Gupta does not expressly teach:

The method of claim 2, further comprising displaying the generated metric for each candidate advertising outlet. However, Gupta teaches that an advertiser may pay based on the number of times different users access a web site, or may only pay if a user clicks on the advertiser's banner and views the advertiser's web page (referred as click-through), and further, a web host may also receive payment based on any completed transactions that result from a click-through (e.g., the web host receives a percentage of the payment received by the advertiser from the user) (referred to as referral commissions), then it would be for the best interest for the Internet Publisher and for the advertiser to indicate and display an inclination metric for each candidate Internet Publisher, that would give advertisers an idea of how successful their

advertisement would be by placing their particular advertisements in a particular candidate Internet Publisher.

As per claim 14, Gupta does not expressly teach:

The method of claim 2, further comprising:

analyzing the generated metrics; and

selecting a candidate advertising outlet on which to place one or more advertising messages for the selected advertiser based upon results of the analysis. The Examiner answers with the same rejection applied to claim 13.

As per claim 15, Gupta teaches:

The method of claim 2, further comprising discerning users that have visited the candidate advertising outlets and those that have visited the selected advertiser by analyzing the contents of logs of one or more web servers that collectively receive a request when a user visits one of the candidate advertising outlets and when a user visits the selected advertiser (see column 4, lines 26-36; column 5, lines 1-9; column 9, lines 10-33; column 10, lines 9-24).

As per claim 16, Gupta teaches:

The method of claim 2, further comprising discerning whether a user has visited the candidate advertising outlets and whether the user has visited the selected advertiser by analyzing information traffic flowing to or from the user (see column 4, lines 26-36; column 5, lines 1-9; column 9, lines 10-33; column 10, lines 9-24).

As per claim 17, Gupta teaches:

The method of claim 16 wherein the analysis analyzes universal resource locators contained in the traffic (see column 9, lines 10-33).

As per claim 18, Gupta teaches:

The method of claim 16 wherein the analysis analyzes filenames contained in the traffic (see column 9, lines 10-33).

As per claim 19, Gupta teaches:

The method of claim 16 wherein the analysis analyzes content contained in the traffic (see column 9, lines 10-33).

As per claim 20, Gupta teaches:

The method of claim 16 wherein the analysis analyzes textual content contained in the traffic (see column 9, lines 10-33).

As per claim 21, Gupta teaches:

The method of claim 16 wherein the analysis analyzes visual content contained in the traffic (see column 9, lines 10-33).

Claim 22 contains the same limitations as claim 2 therefore the same rejection is applied.

Claim 23 contains the same limitations as claims 2 and 7 therefore the same rejection is applied.

Claim 24 contains the same limitations as claims 2 and 8 therefore the same rejection is applied.

As per claim 25, Gupta teaches:

A method in a computing system for assessing, for a selected electronic advertiser and each of a plurality of candidate electronic publishers each having a website, a measure of the desirability of placing with the candidate electronic publisher one or more advertising messages for the selected candidate electronic advertiser, comprising:

selecting a distinguished electronic publisher that produced favorable results when an advertising message for the selected electronic advertiser was earlier placed on the distinguished electronic publisher, the distinguished electronic publisher having a website (see column 5, lines 48-53);

Gupta does not expressly teach:

for each of a plurality of users, storing a user identifier on a computer system used by the user, the number of stored user identifiers constituting a first quantity;

when one of the plurality of users visits the distinguished electronic publisher advertiser website, receiving and storing an indication of a first type indicating that the user visited the distinguished electronic publisher website, the indication containing the user identifier stored on the computer system used by the user;

when one of the plurality of users visits the website of one of the plurality of candidate electronic publishers, receiving and storing an indication of a second type indicating that the user visited the candidate electronic publisher website, the indication containing the user identifier stored on the computer system used by the user and an identifier of the candidate electronic publisher;

selecting the user identifiers contained in stored indications of the first type;

determining the number of unique selected user identifiers, constituting a second quantity;

for each of the candidate electronic publishers, selecting stored indications of the second type that contain an identifier of the candidate electronic publisher;

determining the number of unique user identifiers that are contained in at least one of the selected indications of the second type, constituting a third quantity;

determining the number of unique user identifiers that are contained in at least one of the selected indications of the second type that are also selected, constituting a fourth quantity;

dividing the product of the first and third quantities by the product of the second and fourth quantities to obtain an affinity metric for the candidate electronic publisher;

analyzing the affinity metrics obtained for the candidate electronic publishers; and

selecting one or more of the candidate electronic publishers on which to place an advertising message for the advertiser based upon the analysis.

The Examiner answers with the same rejection apply to claims 1 and 2.

As per claim 26, Gupta does not expressly teach:

The method of claim 25 wherein candidate electronic publishers for which an affinity greater than one is obtained are selected. However, as explained in claims 1 and 2, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gupta would track and store the online activities of users and would use this store data to determine which Internet Publishers would do

better than others in placing particular advertisements. Gupta would use this stored data for ranking the different Internet Publishers in their desirability of placing particular advertisements by giving each Internet Publisher an affinity number, calculated by using simple mathematics, such as explained in claim 1. Then, it would be a business decision for the advertiser to decide to only place advertisements in an Internet Publisher with an affinity number greater than one.

As per claim 27, Gupta does not expressly teach:

The method of claim 25 wherein candidate electronic publishers for which an affinity greater than five is obtained are selected. The Examiner answers with the same rejection applied to claim 26.

Claim 28 contains the same limitations as claim 25 therefore the same rejection is applied.

Claim 29 contains the same limitations as claim 25 therefore the same rejection is applied.

As per claim 30, Gupta teaches:

The method of claim 29 wherein the success metrics are generated based upon a click-through rate for advertising messages placed on the advertising outlet (see column 4, lines 26-36).

As per claim 31, Gupta teaches:

The method of claim 29 wherein the success metrics are generated based upon a conversion rate for advertising messages placed on the advertising outlet (see column 4, lines 26-36).

As per claim 32, Gupta teaches:

The method of claim 29 wherein the success metrics are generated based upon an average purchase amount for advertising messages placed on the advertising outlet (see column 4, lines 26-36; column 9, lines 10-33).

As per claim 33, Gupta teaches:

The method of claim 29 wherein the success metrics are generated based upon a factor specified by the selected advertiser for advertising messages placed on the advertising outlet (see column 15, lines 36-51).

Claim 34 contains the same limitations as claim 28 therefore the same rejection is applied.

Claim 35 contains the same limitations as claim 25 therefore the same rejection is applied.

Claim 36 contains the same limitations as claim 2 therefore the same rejection is applied.

Claim 37 contains the same limitations as claim 2 and 7 therefore the same rejection is applied.

Conclusion

5.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Day teaches a model which organizations can use to monitor Web site effectiveness.

- Ross teaches an affiliate commerce system and method.

- Fleming teaches a method for estimating usage of computer resources.

- Barber teaches a method for rewarding merchant that operates a server on a computer network.

- Auxier teaches a method for increasing click-through rates of Internet banner advertisements.

- Howard teaches a method to generate behavior for emulated visitors traversing an Internet web site.

- Bezos teaches an Internet referral system that enables individuals and other entities to market products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Daniel Lastra
October 17, 2003